

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No. 3:24-CV-00137-RJC-DCK**

CMT USA, INC. and CMT UTENSILI S.P.A.,

Plaintiffs,

v.

APEX TOOL GROUP LLC and APEX
BRANDS, INC.

Defendants.

**DECLARATION OF ROBERT E.
COLLETTI, ESQ. IN SUPPORT OF
CMT's MOTION FOR SUMMARY
JUDGMENT OF TRADEMARK
INFRINGEMENT**

I, Robert E. Colletti, hereby declare as follows:

1. I am a partner of the law firm Haug Partners, 745 Fifth Avenue, New York, New York, 10151, and counsel for Plaintiffs CMT USA, Inc. and CMT Utensili, S.p.A. (collectively, "Plaintiffs" or "CMT"), in this action.

2. I submit this declaration based on my personal knowledge and in support of CMT's Motion for Summary Judgment of Trademark Infringement. I further submit this declaration to place before the Court true and accurate copies of certain documents.

I. CMT Fact Witness Documents

3. Attached hereto as **Exhibit A** is a true and accurate copy of pages excerpted from Volume I and Volume II of the transcript from the deposition of Marcello Tommassini, CEO of CMT Utensili, S.P.A., taken on August 15-16, 2024, which has been designated Highly Confidential under the Court's protective order (Dkt. 67).

4. Attached hereto as **Exhibit B** is a true and accurate copy of pages excerpted from Volume I and Volume II of the transcript from the deposition of Massimo Ricci, President of CMT USA, Inc., taken on August 14-15, 2024, which has been designated Highly Confidential under the Court's protective order (Dkt. 67).

II. CMT Expert Witness Documents

5. Attached hereto as **Exhibit C** is a compilation of the following documents, which have been designated Highly Confidential under the Court's protective order (Dkt. 67):

- a. A true and accurate copy of pages excerpted from the Expert Report of GBX by Jon-Reid Henz, CMT's economics and damages expert, dated November 22, 2024;
- b. A true and accurate copy of Exhibit 4.4 from the Expert Report of GBX by Jon-Reid Henz, CMT's economics and damages expert, dated November 22, 2024;
- c. A true and accurate copy of Exhibit 6 from the Expert Report of GBX by Jon-Reid Henz, CMT's economics and damages expert, dated November 22, 2024;
- d. A true and accurate copy of Exhibit 6.1 from the Expert Report of GBX by Jon-Reid Henz, CMT's economics and damages expert, dated November 22, 2024.

6. Attached hereto as **Exhibit D** is a true and accurate copy of pages excerpted from the Expert Report of Thomas J. Maronick, DBA, JD, CMT's survey expert, dated November 19, 2024, which has been designated Highly Confidential under the Court's protective order (Dkt. 67).

7. Attached hereto as **Exhibit E** is a true and accurate copy of pages excerpted from the Expert Report of Professor Russell S. Winer, CMT's marketing and damages expert, dated November 22, 2024, which has been designated Highly Confidential under the Court's protective order (Dkt. 67).

8. Attached hereto as **Exhibit F** is a true and accurate copy of pages excerpted from the Expert Report of David R. Wyble, Ph.D., CMT's color-science expert, dated November 22, 2024, which has been designated Highly Confidential under the Court's protective order (Dkt. 67).

III. CMT Production Documents & Other Discovery Materials

9. Attached hereto as **Exhibit G** is a true and accurate copy of the Plaintiffs' Fifth Supplemental Response to Defendants' First Set of Interrogatories (No. 9), dated December 18, 2024, along with a true and accurate copy of the Verification of Plaintiffs' Fifth Supplemental Response to Defendants' First Set of Interrogatories (No. 9), dated December 18, 2024, which has been designated Confidential under the Court's protective order (Dkt. 67).

10. Attached hereto as **Exhibit H** is a compilation of the following CMT production documents. “CMT Summary Judgment Opening Ex. H, page _” was added to the lower left corner of Exhibit H’s pages. CMT references these page numbers in its supporting memorandum.

- a. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0000333-CMT0000465;
- b. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0000642-CMT0001009;
- c. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0002099-CMT0002433;
- d. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0003285-CMT0003316;

11. Attached hereto as **Exhibit I** is a compilation of the following CMT production documents. “CMT Summary Judgment Opening Ex. I, page _” was added to the lower left corner of Exhibit I’s pages. CMT references these page numbers in its supporting memorandum.

- a. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0005096-CMT0005123;
- b. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0014784-CMT0014791;
- c. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0014963-CMT0014964, which are images of the front and back of a 7¼" 24-tooth CMT “ITK Plus” circular woodworking saw blade that, at my direction, has had its silk-screened text and graphics removed by a solvent;
- d. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0014965-CMT0014966, which are images of the front and back of a 7¼" 24-tooth CMT “ITK Plus” circular woodworking saw blade that, at my direction, has been used to cut wood;
- e. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0014967-CMT0014968, which are images of the front and back of a

7¼" 24-tooth Apex "NailSlicer" circular woodworking saw blade that, at my direction, has had its silk-screened text and graphics removed by a solvent;

- f. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0014969-CMT0014970, which are images of the front and back of a 7¼" 24-tooth Apex "NailSlicer" circular woodworking saw blade that, at my direction, has been used to cut wood;
- g. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0014971-CMT0014972;
- h. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0014974-CMT0015007;
- i. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0015009-CMT0015050;
- j. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0015060-CMT0015063;
- k. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0015064-CMT0015066;
- l. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT00015067-CMT00015069;
- m. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0015070-CMT0015073;
- n. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0015074-CMT0015075;
- o. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0015076-CMT0015077;
- p. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0015078-CMT0015079;
- q. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0015080-CMT0015081;

- r. A true and accurate copy of the CMT production document bearing Bates No. CMT0015082;
- s. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0015083-CMT0015085;
- t. A true and accurate copy of the CMT production document bearing Bates No. CMT0015086;
- u. A true and accurate copy of the CMT production document bearing Bates No. CMT0015087;
- v. A true and accurate copy of pages excerpted from the CMT production document bearing Bates Nos. CMT0015088-CMT0015091;
- w. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0015092-CMT0015093;

12. Attached hereto as **Exhibit J** is a compilation of the following CMT production documents, which have been designated Highly Confidential under the Court's protective order (Dkt. 67). "CMT Summary Judgment Opening Ex. J, page _" was added to the lower left corner of Exhibit J's pages. CMT references these page numbers in its supporting memorandum.

- a. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0013003-CMT0013005;
- b. A true and accurate copy of the CMT production document bearing Bates Nos. CMT0013006-CMT0013017;
- c. A true and accurate copy of pages excerpted from the CMT production document bearing Bates No. CMT0014539.
- d. A true and accurate copy of the CMT production document bearing Bates No. CMT0014781.

13. Attached hereto as **Exhibit K** is a compilation of the following documents. "CMT Summary Judgment Opening Ex. K, page _" was added to the lower left corner of Exhibit K's pages. CMT references these page numbers in its supporting memorandum.

- a. A true and accurate copy of a document introduced as Exhibit 110 during the

deposition of one of Apex's fact witnesses.

- b. A true and accurate copy of pages excerpted from a document introduced as Exhibit 5 during the deposition of one of Apex's expert witnesses;
- c. A true and accurate copy of a document introduced as Exhibit 12 during the deposition of one of Apex's expert witnesses;
- d. A true and accurate copy of a document introduced as Exhibit 15 during the deposition of one of Apex's expert witnesses.

IV. Apex Fact Witness Documents

14. Attached hereto as **Exhibit L** is a true and accurate copy of pages excerpted from the transcript of the deposition of Scott Bublitz, Senior Manager of Industrial Design at Apex Tool Group, LLC, taken September 23, 2024, portions of which have been designated Confidential or Highly Confidential under the Court's protective order (Dkt. 67).

15. Attached hereto as **Exhibit M** is a true and accurate copy of pages excerpted from the transcript of the deposition of Ian Cunningham, Vice President of Design at Apex Tool Group, LLC, taken September 25, 2024, portions of which have been designated Confidential or Highly Confidential under the Court's protective order (Dkt. 67) .

16. Attached hereto as **Exhibit N** is a true and accurate copy of pages excerpted from the transcript of the deposition of Ryan Kropfelder, Senior Product Manager for Apex Tool Group, LLC, taken August 7, 2024, portions of which have been designated Confidential or Highly Confidential under the Court's protective order (Dkt. 67).

17. Attached hereto as **Exhibit O** is a true and accurate copy of pages excerpted from the transcript of the deposition of Raymond Smith, Vice President of Marketing for Gear Wrench Tools and Campbell, a division of Apex Tool Group, LLC, taken on August 8, 2024, which has been designated Highly Confidential under the Court's protective order (Dkt. 67).

18. Attached hereto as **Exhibit P** is a true and accurate copy of pages excerpted from the transcript of the Rule 30(b)(6) deposition of Apex Tool Group, LLC by Brendan Walsh, Director of Product Management for Crescent Brand, taken on September 24, 2024, portions of which have been designated Confidential or Highly Confidential under the Court's protective order (Dkt. 67).

19. Attached hereto as **Exhibit Q** is a true and accurate copy of pages excerpted from the transcript of the deposition of Curtis Weber, Vice President of the Crescent Tools Brand, taken on August 9, 2024, portions of which have been designated Confidential or Highly Confidential under the Court's protective order (Dkt. 67).

V. Apex Expert Witness Documents

20. Attached hereto as **Exhibit R** is a true and accurate copy of pages excerpted from the transcript of the deposition of Leslie Banduch, Apex's purported industry expert, taken on February 3, 2025, portions of which have been designated Highly Confidential under the Court's protective order (Dkt. 67).

21. Attached hereto as **Exhibit S** is a true and accurate copy of pages excerpted from the Expert Report of Steven Bleicher, Apex's purported color expert, dated November 22, 2024.

22. Attached hereto as **Exhibit T** is a true and accurate copy of pages excerpted from the Rebuttal Expert Report of Steven Bleicher, Apex's purported color expert, dated December 20, 2024.

23. Attached hereto as **Exhibit U** is a true and accurate copy of pages excerpted from the transcript of the deposition of Steven Bleicher, Apex's purported color expert, dated February 28, 2025.

24. Attached hereto as **Exhibit V** is a true and accurate copy of pages excerpted from the Expert Report of David Franklyn, Apex's purported survey expert, dated November 22, 2024.

25. Attached hereto as **Exhibit W** is a true and accurate copy of pages excerpted from the transcript of the deposition of David Franklyn, Apex's purported survey expert, dated March 13, 2025.

26. Attached hereto as **Exhibit X** is a true and accurate copy of pages excerpted from the Expert Sur-Rebuttal Report of David Franklyn, submitted by Phi Theta Kappa Honor Society in the case of *Phi Theta Kappa Honor Society v. Michael Moradian and HonorSociety.org, Inc.*, No. 3:22-cv-00208-CWR-RPM (S.D. Miss), D.I. 453-1, dated November 26, 2024. This report was filed publicly on PACER by counsel for Phi Theta Kappa Honor Society on February 28, 2025, and retrieved by a member of my staff on or about March 6, 2025.

27. Attached hereto as **Exhibit Y** is a compilation of the following documents, which

has been designated Highly Confidential under the Court's protective order (Dkt. 67):

- a. A true and accurate copy of pages excerpted from the Rebuttal Expert Report of Krista F. Holt, Apex's purported economics damages expert, dated December 20, 2024;
- b. A true and accurate copy of Exhibit 2.3 from the Rebuttal Expert Report of Krista F. Holt, Apex's purported economics damages expert, dated December 20, 2024;
- c. A true and accurate copy of Exhibit 8.0.1 from the Rebuttal Expert Report of Krista F. Holt, Apex's purported economics damages expert, dated December 20, 2024.

28. Attached hereto as **Exhibit Z** is a true and accurate copy of pages excerpted from Volume I and Volume II of the transcript of the deposition of Krista F. Holt, Apex's purported economics damages expert, dated February 19, 2025, portions of which have been designated Confidential or Highly Confidential under the Court's protective order (Dkt. 67).

VI. Apex Production Documents & Other Discovery Materials

29. Attached hereto as **Exhibit AA** is a true and accurate copy of pages excerpted from Defendants' Response to Plaintiffs' First Set of Interrogatories (No. 1-18), dated January 17, 2024.

30. Attached hereto as **Exhibit BB** is a compilation of the following Apex production documents. "CMT Summary Judgment Opening Ex. BB, page _" was added to the lower left corner of Exhibit BB's pages. CMT references these page numbers in its supporting memorandum.

- a. A true and accurate copy of the Apex production document bearing Bates No. APEX00000326;
- b. A true and accurate copy of the Apex production document bearing Bates No. APEX00000368;
- c. A true and accurate copy of the Apex production document bearing Bates Nos. APEX00003266-APEX00003267;
- d. A true and accurate copy of the Apex production document bearing Bates Nos. APEX00003270-APEX00003272;

- e. A true and accurate copy of the Apex production document bearing Bates Nos. APEX00004056-APEX00004059;
- f. A true and accurate copy of the Apex production document bearing Bates Nos. APEX00004060-APEX00004061;
- g. A true and accurate copy of the Apex production document bearing Bates Nos. APEX00004062-APEX00004065;
- h. A true and accurate copy of pages excerpted from the Apex production document bearing Bates Nos. APEX00004630-APEX00005225;
- i. A true and accurate copy of the Apex production document bearing Bates Nos. APEX00005239-APEX00005239.

31. Attached hereto as **Exhibit CC** is a compilation of the following Apex production documents, which have been designated Highly Confidential under the Court's protective order (Dkt. 67). "CMT Summary Judgment Opening Ex. CC, page _" was added to the lower left corner of Exhibit CC's pages. CMT references these page numbers in its supporting memorandum.

- a. A true and accurate copy of the Apex production document bearing Bates No. APEX00002117;
- b. A true and accurate copy of the Apex production document bearing Bates Nos. APEX00002409-APEX00002419;
- c. A true and accurate copy of the Apex production document bearing Bates Nos. APEX00003122-APEX00003124;
- d. A true and accurate copy of the Apex production document bearing Bates No. APEX00003387;
- e. A true and accurate copy of the Apex production document bearing Bates No. APEX00003602;
- f. A true and accurate copy of pages excerpted from the Apex production document bearing Bates Nos. APEX00005355-APEX00005432.

VII. Production Documents From Third Party Marksmen Brand Protection Services

32. Attached hereto as **Exhibit DD** is a compilation of the following documents produced in this litigation by third party Marksmen Brand Protection Services (“Marksmen”), which have been designated Highly Confidential under the Court’s protective order (Dkt. 67). “CMT Summary Judgment Opening Ex. DD, page _” was added to the lower left corner of Exhibit DD’s pages. CMT references these page numbers in its supporting memorandum.

- a. A true and accurate copy of the document produced in this litigation by Marksmen bearing Bates Nos. MRK0000179-MRK0000187;
- b. A true and accurate copy of the document produced in this litigation by Marksmen bearing Bates Nos. MRK0000243-MRK0000244.

VIII. Miscellaneous Documents

33. Attached hereto as **Exhibit EE** is a true and accurate copy of an email from A. Johnson of Womble Bond Dickinson, sent March 13, 2025 at 5:18 p.m.

34. Attached hereto as **Exhibit FF** is a true and accurate copy of Jerre B. Swann, *Eveready and Squirt–Cognitively Updated*, 106 TMR 727-753 (2016).

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate.

Dated: April 2, 2025

/s/ Robert E. Colletti, Esq.
Robert E. Colletti, Esq.